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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.M. et al., Persons Coming
Under the Juvenile Court Law.

B292617

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP03572)

Plaintiff and Respondent,

v.

E.R.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Kristen Byrdsong, Juvenile Court Referee. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Objector and Appellant.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Respondent.

The dependency court sustained jurisdiction over son, age 13, and daughter, age 16, on the ground they had been emotionally abused due to their parents' daily arguments in their presence, and mother's calling daughter derogatory names. The court also issued a permanent restraining order protecting father from mother. Mother appeals from the restraining order, arguing it is not supported by substantial evidence. We disagree and affirm.¹

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (Department) filed a petition on behalf of daughter and son, alleging that mother had hit daughter and pulled her hair, mother had called daughter "derogatory and demeaning names," father had failed to protect the children from mother's abuse, and father and mother had engaged in daily arguments in the children's presence.

The Department reported that both children attested to mother's physical abuse. Daughter said mother used to hit them "with an open hand," "throw shoes at us[,] and hit us with a belt." This abuse occurred when they "were younger," "three or four years ago." Daughter also said that father tried to defend the children, and mother had slapped father. Son said mother hit him on his arm, and, when he was younger, hit him with a hanger or a belt. He said he was afraid of mother, and felt she was "going to hurt" him, but felt safe with father.

¹ Father is the respondent in this matter and has filed a respondent's brief. The Department has filed a letter in which it advised this court that it would not be filing a brief.

The family had been referred to the Department several times in the past. In 2012, a referral alleged mother had physically abused son. In 2017, it was alleged that mother physically and emotionally abused both children. In 2018, it was alleged mother emotionally and physically abused the children, and father had threatened to physically abuse son. The referrals had either been closed as inconclusive, or “evaluated out.”

The juvenile court detained daughter and son from their parents, finding “domestic violence,” “outrageous behavior” by mother, and that father had failed to protect the children. In August 2018, the juvenile court declared daughter and son dependents of the court on the grounds that they had suffered emotional abuse due to their parents’ daily arguments, and mother’s calling daughter derogatory names.

The court also granted father a temporary restraining order against mother. Father claimed he had recently gotten into an altercation with mother over the volume level of the television. He requested that mother turn down the volume, but mother ignored his requests. When he “attempted to get the remote,” she “attacked” him. Mother scratched him, causing him to bleed. On a “prior occasion,” she scratched him on his face, chest and back. Mother acknowledged that she had scratched father while fighting over the remote, and had caused him to bleed. Father called the police, and mother told an officer that she had also “sustained a scratch” during the altercation. Both parents were arrested.

The court found that “father is the victim of mother’s outrageous and violent behavior just as the children have been victims” The court granted a temporary restraining order and ordered mother to move out of the family home. A hearing

was subsequently held on father's request for a permanent restraining order, which the court granted. Mother timely appealed.

DISCUSSION

Welfare and Institutions Code section 213.5 permits the juvenile court to issue an order “enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, . . . destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace” of any child or parent. (*Id.*, at subd. (a).)

Subdivision (e) of section 213.5 provides that the juvenile court may issue a restraining order excluding a person from a residence when there is a showing that (1) the party who will stay in the dwelling has a right to possession of the premises, (2) the party to be excluded assaulted the other party, and (3) physical or emotional harm would otherwise result to the protected party.

Evidence “that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the [protected person] is certainly sufficient” to support a restraining order under section 213.5. (*In re B.S.* (2009) 172 Cal.App.4th 183, 193.) We review the court's issuance of a restraining order for substantial evidence. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211.) “[W]e view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court's determination.” (*Id.* at p. 210.)

Mother first contends that the restraining order was not supported by substantial evidence because the record showed

that father was “not merely a victim of domestic violence; rather he was a co-combatant.” Mother claims that father admitted he “initiated physical contact by attempting to take the remote control from Mother.” Mother mischaracterizes the record – father stated only that as he “attempted to get the remote . . . she attacked me.”

Mother next argues that “father’s own conduct undermined his claim of innocent victimization,” citing to evidence that father secretly recorded conversations with mother. Whether father can be faulted for recording conversations with mother does not necessarily undermine the court’s conclusion that mother was violent towards father. Mother did not dispute father’s claim that she attacked him and scratched him, drawing blood.

Mother also contends the court erred in relying on evidence of prior child welfare referrals, and the Department’s last minute report. Mother does not cite to any part of the record showing that the court specifically relied on this evidence in issuing the restraining order. A review of the record only shows this information was admitted into evidence, in addition to several other reports. Moreover, the question before us is not whether any particular piece of evidence did not support the restraining order, but whether upon looking at the record as a whole, there is any evidence that is “‘reasonable, credible, and of solid value’” supporting the court’s order. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 84.) We conclude there is.

DISPOSITION

The order is affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.